

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Master Services Agreement
with Mythics, Inc. For
Professional Services to
support Oracle and other
technology products as
needed.

_____	Briefing
_____	Proposed Action
_____	Consent
<u> x </u>	Action
_____	First Reading
_____	Second
_____	Reading
_____	Third Reading
_____	Public Hearing

COUNCIL BILL # _____

Originating Department

Information
Technology

Contact Person

Kevin Walser

Phone Number

425-257-8663

FOR AGENDA OF

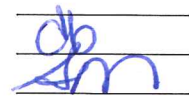
November 16, 2016

Initialed by:

Department Head

CAA

Council President



Location

Information Technology

Preceding Action

Attachments

Mythics Master Services
Contract Statement of
Work

Department(s) Approval

IT, Legal

Amount Budgeted	\$20,360	
Expenditure Required	\$20,360	
Budget Remaining	\$0	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Information Technology would like to enter into a Master Services Agreement with Mythics, Inc. to provide Professional Services to support Oracle and other technology products in an amount not to exceed \$20,360.

RECOMMENDATION (Exact action requested of Council): Authorize the Mayor to sign the Master Services Agreement with Mythics, Inc. for Professional Services to support Oracle and other technology products as needed in an amount not to exceed \$20,360.



MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement"), by and between City of Everett, a Washington municipal corporation ("CLIENT") and Mythics, Inc., a Virginia corporation (the "COMPANY"), is effective as of 4 November 2016 (the "Effective Date").

WHEREAS, the CLIENT desires to retain COMPANY to perform those services set forth in Exhibit A attached hereto (the "Statement of Work" or the "Services"), and COMPANY desires to perform or provide for the performance of the Services for the CLIENT.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. RENDITION OF THE SERVICES

A. The Services.

- i. CLIENT hereby retains COMPANY to perform the Services, and COMPANY agrees to perform the Services for CLIENT, during the Term (as defined below) of this Agreement. The Services may be updated from time to time by CLIENT, and upon execution by each of COMPANY and CLIENT of a separate Statement of Work for each engagement, shall be deemed a part of this Agreement, subject to each of the terms and conditions contained herein. If any terms and conditions between the Agreement and Statement of Work are in conflict, the Agreement will govern.
- ii. COMPANY will perform, undertake, carry out and complete all work, Services and provide all deliverables described in the Statement of Work (the "Deliverables"), and assign its own employees, consultants, contractors or subcontractors (collectively, the "Personnel") to perform all services in keeping with generally accepted industry standards as set forth in Section VI. i. herein, according to the established time frames and description as set forth in the applicable Statement of Work. CLIENT hereby authorizes COMPANY, at its election, to subcontract all or a portion of the Services to an entity or individuals chosen in COMPANY's sole discretion (a "Subcontractor"). For purposes of this Agreement, all references to COMPANY's performance of the Services shall be deemed to include any Subcontractor selected by COMPANY.
- iii. No work or Services by COMPANY or the Personnel shall be subject to compensation by CLIENT unless and until set forth in a Statement of Work signed by authorized representatives of each party to this Agreement. For the CLIENT, the authorized representative may be either the Mayor or the CLIENT's IT Director.

B. Location of the Services.

- i. COMPANY shall perform the Services at the location determined by the CLIENT (the "Worksite").
- ii. CLIENT shall provide any written rules and regulations regarding the Worksite to



COMPANY, and upon receipt, COMPANY agrees to abide by and to require all of the Personnel to abide by all such written rules and regulations. CLIENT shall have the right to reasonably modify the work rules or promulgate additional work rules, and COMPANY and the Personnel shall comply with such modified or additional work rules immediately following receipt thereof.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the Effective Date and shall continue for consecutive periods of one (1) year each, with the Agreement automatically renewing on the annual anniversary of the Effective Date (the "Renewal Date"), unless earlier terminated under Article II (B) or (C), or upon written notice to the other party thirty (30) days before the Renewal Date. The period from the Effective Date to the date this Agreement terminates for any reason is referred to as the "Term."

B. Termination for Breach. Either party may terminate this Agreement for material breach of this Agreement by the other party upon thirty (30) days written notice to the other party, if such breach is not cured by the other party within such period. CLIENT shall pay COMPANY for all services rendered and expenses incurred by COMPANY prior to such termination.

C. Termination for Insolvency. Either party to this Agreement may terminate this Agreement by written notice to the other party if the other party: is adjudicated an involuntary bankrupt, or a decree or order approving a petition or answer filed against such party asking for reorganization under the Federal bankruptcy laws as now or hereafter amended, or under the laws of any state, shall be entered, or if a petition for involuntary bankruptcy has been filed against the other party and such petition has not been dismissed within forty-five (45) days of the filing; files or admits to the jurisdiction of the court the material allegations contained in any petition pursuant, or purporting to be pursuant, to the Federal Bankruptcy laws as now or hereafter amended, or such party institutes any proceeding for any relief under any bankruptcy or insolvency law or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or makes any assignment for the benefit of creditors or applies for consent to the appointment of a receiver for itself or any of its property.

D. Return of all Materials. Upon termination of this Agreement for any reason and subject to the Transparency Laws (defined below), each party shall, upon written request of the other party, deliver to the other party, or confirm destruction of, all Confidential Information and Inventions (each, as defined below) in the possession of the party or the Personnel, including, without limitation, all drawings, writings, computer software, descriptions, or other papers, including all copies thereof. Upon termination of this Agreement for any reason, COMPANY shall stop work immediately and make all work in progress available to CLIENT.

III. PAYMENT TERMS

A. Payment for the Services.



- i. COMPANY will be compensated for the services of personnel in accordance with the rates negotiated and documented in each applicable Statement of Work. Within seven (7) days after the end of each month during the Term of this Agreement, COMPANY shall invoice CLIENT for the Services, and each such invoice shall set forth (a) the name of each consultant that has performed the Services, (b) the date(s) each such consultant performed the Services, (c) the exact number of hours each such consultant spent performing the Services, (d) the hourly rate for each consultant, and (e) the total amount due from CLIENT to COMPANY pursuant to that invoice.
- ii. All payments from CLIENT to COMPANY are due in full within thirty (30) days after receipt of payment from the customer or no later than sixty (60) days from receipt of a valid COMPANY invoice (with backup receipts and delineation of the hours worked on a daily basis), whichever comes first. If any portion of a bill has not been paid within sixty (60) days of receipt of invoice, interest at the rate of one percent per month [12] per annum], compounded monthly, of all owed amounts, shall automatically be added to the amount owed. If any balance remains outstanding seventy-five (75) days following the date of the bill, COMPANY may terminate this Agreement or any portion thereof. Termination of this Agreement or any portion thereof pursuant to this provision shall not release CLIENT from any of its obligations hereunder.
- iii. COMPANY shall be solely responsible for the reporting and payment of all applicable federal or state sales or use taxes, or related to levies, applicable to the Services and payment therefore.

B. Expenses and Reimbursement. All expenses including, without limitation, hotel, food and transportation costs, shall be reimbursed by CLIENT to COMPANY in compliance with the Federal Travel Regulations (copies of receipts are required).

IV. REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties. As an inducement to the parties to enter into this Agreement, both parties represent and warrant as follows:

- i. The parties have full power and authority to sign and deliver this Agreement and to perform its obligations under this Agreement. The signing, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of CLIENT and COMPANY.
- ii. CLIENT and COMPANY have duly and validly signed and delivered this Agreement. This Agreement constitutes a valid and legally binding obligation of CLIENT and COMPANY, enforceable against it in accordance with its terms.

V. PROPRIETARY RIGHTS

A. Confidential and Proprietary Information and Materials. "Confidential Information" means information, not generally known, and proprietary to the CLIENT or to a third party for whom the CLIENT is performing work, including, without limitation, information concerning any patents or



trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the CLIENT, any vendor names, customer and supplier lists, databases, management systems and sales and marketing plans of the CLIENT, any confidential secret development or research work of the CLIENT, or any other confidential information or proprietary aspects of the business of the CLIENT. All information which COMPANY acquires or becomes acquainted with during the period of this Agreement, whether developed by COMPANY or by others, which COMPANY has a reasonable basis to believe to be Confidential Information, or which is treated by the CLIENT as being Confidential Information, shall be presumed to be Confidential Information.

Non-Use and Non-Disclosure. Confidential Information of the disclosing party may be used by the receiving party only in connection with the performance of the receiving party's obligations under this Agreement. Each party agrees to protect from disclosure the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, which standard of care shall be no less than reasonable care. Confidential Information does not include information which (i) is already known to the receiving party and has properly been obtained as of the date of disclosure; (ii) already in possession of the public or becomes available to the public other than through the act or omission of the receiving party in violation of this Agreement; (iii) required to be disclosed under applicable law or by governmental order, decree, regulation or rule (provided that the receiving party shall give written notice to the disclosing party prior to such disclosure); (iv) acquired independently and without obligation of confidence from a third party that represents that it has the right to disseminate such information at the time it is acquired by the receiving party; or (v) independently developed by the receiving party.

Return of Materials. Upon the termination of this Agreement, or upon either party's earlier request, the receiving party shall return or destroy all of the disclosing party's property or Confidential Information that the receiving party may have in its possession or control.

B. Ownership and Assignment of Intellectual Property Rights.

- i. **Property of the Company** - COMPANY agrees that all plans, manuals and specific materials provided to the COMPANY by the CLIENT and are employed by the COMPANY on behalf of the CLIENT in connection with services rendered under this Agreement, are and shall remain the exclusive property of the CLIENT. Promptly upon the expiration or termination of this Agreement, or upon the request of the CLIENT, COMPANY shall deliver to the CLIENT all documents and tangible items, including samples, provided to COMPANY or created by COMPANY for use in connection with services to be rendered hereunder, including without limitation all Confidential Information, together with all copies and abstracts thereof.
- ii. **Data** - All drawings, models, designs, formulas, methods, documents and tangible items prepared for and submitted to the CLIENT or its designee(s) by COMPANY in connection with the services rendered under this Agreement shall belong exclusively to the CLIENT and shall be deemed to be works made for hire (the "Deliverable Items"). To the extent that any



of the Deliverable Items may not, by operation of law, be works made for hire, COMPANY hereby assigns to the CLIENT the ownership of copyright or mask work in the Deliverable Items, and the CLIENT shall have the right to obtain and hold in its own name any trademark, copyright, or mask work registration, and any other registrations and similar protection which may be available in the Deliverable Items. COMPANY agrees to give the CLIENT or its designee(s) all assistance reasonably required to perfect such rights.

- iii. **Competitive Products; General Knowledge, Skills.** Nothing in this Agreement shall preclude COMPANY from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, irrespective of their similarity to materials which may be delivered to CLIENT pursuant to this Agreement. In addition, nothing in this Agreement shall preclude COMPANY from using any general consulting, data processing, software, principles, concepts, ideas, skills, tools, methodologies or other knowledge that COMPANY may acquire during the course of providing the services hereunder, provided that COMPANY shall not disclose any of CLIENT's Confidential Information in accordance with the terms of Section V A. (Confidentiality).
- iv. **Pre-existing Materials.** The CLIENT acknowledges that, as part of performing the Services, the COMPANY may utilize proprietary software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques that have been originated or developed by the Consultant or that have been purchased by or licensed to the COMPANY (collectively, the "COMPANY Proprietary Materials"), including enhancements, modifications or additions that have been developed while the COMPANY has been performing the Services under this Agreement. The COMPANY grants the CLIENT and/or its designee(s) a perpetual, non-exclusive, worldwide, non-transferable license to use the COMPANY Proprietary Materials in connection with the Deliverables or the Services. The CLIENT agrees that the COMPANY shall retain sole and exclusive right, title and interest in and to the COMPANY Proprietary Materials.

C. Personnel Agreement. CLIENT expressly consents to COMPANY's use of subcontractors in connection with the performance of the services. The execution of these subcontract agreements by the Personnel shall not limit COMPANY's liability for breach by COMPANY or the Personnel of any of the provisions of this Article V, or any improper use or disclosure by COMPANY or the Personnel of any Confidential Information or Invention.

D. Rights to Injunctive Relief. COMPANY acknowledges that the terms of Articles V and VI.D of this Agreement are reasonably necessary to protect the legitimate interests of the CLIENT, are reasonable in scope and duration, and are not unduly restrictive. COMPANY further acknowledges that a breach of any of the terms of Articles 5, 6, or 7 of this Agreement will render irreparable harm to the CLIENT, and that a remedy at law for breach of the Agreement is inadequate, and that the CLIENT shall therefore be entitled to seek any and all equitable relief, including, but not limited to, injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. COMPANY acknowledges that an award of damages to the CLIENT



does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

E. Washington Transparency Laws. COMPANY acknowledges that the CLIENT is subject to the Washington Public Records Act, chapter 42.56 RCW and other Washington statutes related to open government and record retention (collectively, the "Transparency Laws"). If the CLIENT receives a records request under the Transparency Laws that requests any records that may be considered Confidential Information of COMPANY, then the CLIENT shall use reasonable efforts to give written notice to COMPANY. If COMPANY desires that the records not be disclosed, COMPANY shall commence an action in Snohomish County Superior Court before the disclosure date. Notwithstanding anything to the contrary in the Agreement or any Statement of Work or in this Section V.E, the CLIENT has no liability whatsoever to COMPANY for the disclosure of or retention of any record when that disclosure is consistent with the Transparency Laws or with an order applying the Transparency Laws entered by the Snohomish County Superior Court or a Washington appellate court.

VI. COVENANTS

A. Performance Covenants.

- i. COMPANY represents and warrants that (a) it has no obligations to any third party which will in any way limit or restrict its ability to perform the Services; (b) it is capable of performing all of the Services; and (c) COMPANY is in compliance with all applicable U.S. federal, state and local laws, rules and regulations, concerning immigration, employment and taxes.
- ii. COMPANY warrants that its services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from completion of service.

THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR ANY BREACH OF THE WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY, AND COMPANY'S ENTIRE LIABILITY, SHALL BE THE RE-PERFORMANCE OF THE DEFICIENT SERVICES, OR IF COMPANY CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO COMPANY FOR THE DEFICIENT SERVICES.

- iii. COMPANY may be required to provide personnel who have successfully passed a background investigation and drug screening. COMPANY will be required to contract with a company which is licensed to provide this service. The results of the background investigation and drug screening will be made available to CLIENT, if requested. The CLIENT will have final approval in the selection of personnel meeting this requirement.



- iv. COMPANY shall not discriminate against any employee or applicant for employment based upon sex, race, national origin, religion, color, pregnancy, ancestry, age, marital status, veteran status, medical condition or disability, or any other legally protected basis. COMPANY shall not discriminate on such bases in any terms and conditions of employment, including, but not limited to, hiring, employment, promotion, demotion or transfer, recruitment, advertising, lay-off, termination, rates of pay or other compensation, and selection for training, including apprenticeship.
- v. In connection with the execution of and performance under this Agreement, COMPANY further covenants that at all times it shall comply with the mandatory provisions of the following:
 - The provisions of Title 41, Chapter 60, Part 60-1, Code of Federal Regulations, relating to Executive Orders 11246, as amended by Executive Order 11375, and Executive Order 11141;
 - The provisions of Title 41, Chapter 60, Part 60-250, Code of Federal Regulations, relating to the Affirmative Action Program for Disabled Veterans and Veterans of the Vietnam Era;
 - The provisions of Title 41, Chapter 1, Sub-part 1-1.13, Code of Federal Regulations, relating to Minority Business Enterprises; and
 - The provisions of Title 41, Chapter 60, Part 60-741, Code of Regulations, relating to Affirmative Action Program for the Handicapped.

B. Taxes, Benefits and Licenses. At all times during the Term of this Agreement, COMPANY shall be solely responsible for its personnel: (a) the payment of all federal, state, and local taxes and all appropriate deductions or withholdings; (b) the payment or provision of any unemployment insurance benefits, state disability benefits, vacation, overtime or holiday pay, health, medical, dental or group insurance or any pension or profit sharing; (c) obtaining any applicable business or other commercial licenses; and (d) the hiring, firing, supervising and payment of compensation or other benefits to any agent, independent contractor, employee or assistant engaged by COMPANY to perform any aspect of the Services.

C. Compliance with Laws. At all times during the Term of this Agreement, COMPANY shall comply (and assist CLIENT in complying) with all mandatory and applicable federal, state, and local laws and regulations pertaining to employment in the United States under this Agreement. In particular, COMPANY agrees to comply with all applicable employment laws and tax laws in the United States.

D. Non-Solicitation.

1. Subject to Section 2 below, it is expressly agreed that neither Party will directly solicit, hire, consult, or otherwise contract with any employee(s) of the other Party who are associated



with the investigation / marketing efforts and subsequent proposals, and/or contract/subcontract efforts called for under this Agreement during the course of this Agreement for a period of one (1) year thereafter without prior written consent of the other Party. This shall not prohibit one Party from hiring any employee of the other Party who responds to (i) routine employment solicitations, or open house or job fair events, or (ii) widely distributed announcements of job openings.

2. COMPANY acknowledges that CLIENT is a public agency subject to civil service rules, procurement and contracting rules and other laws and regulations. These rules include public announcements of all employment openings. COMPANY agrees that so long as a CLIENT solicitation, hiring, consultation or contract is compliance with such public agency rules, laws and regulations, Section D.1 does not apply.

E. **Insurance.** Throughout the term of this Agreement, COMPANY will carry, at its expense, workers' compensation and comprehensive general liability, bodily injury, and property damage insurance in amounts noted below with an insurance company acceptable to CLIENT. COMPANY's obligation to carry insurance shall be in addition to, and in no way shall limit COMPANY's indemnification obligations under Article VIII of this Agreement.

- ❖ Worker's compensation insurance as prescribed by the law of the state(s) in which the work is performed, including Employer's Liability insurance with limits of at least \$1,000,000 for each occurrence;
- ❖ Comprehensive Automobile Liability insurance with limits of at least \$1,000,000 combined single limit for bodily injury and property damage for each occurrence covering all owned, hired, and non-owned vehicles;
- ❖ Commercial General Liability insurance, including Blanket Contractual Liability covering the indemnity provisions of this Agreement and Broad Form Property damage, with limits of at least \$1,000,000 combined single limit for bodily injury, personal injury (e.g., slander, libel, wrongful detention, false arrest, etc.) and property damage for each occurrence and Employer's Stop Gap Liability endorsements, where applicable, and \$2,000,000 in the aggregate;
- ❖ Employee Dishonesty Coverage under a Crime Policy or Fidelity Bond with limits of at least \$100,000 for each occurrence, including loss to Customer, covering all Consultant Employees performing Services; and
- ❖ Professional Liability (Errors and Omissions) insurance, with limits of at least \$1,000,000 for each occurrence.

VII. INDEMNIFICATION

A. **Indemnification by COMPANY.** COMPANY covenants to fully indemnify, save and hold harmless CLIENT, its officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims, demands and actions of any kind on account of personal injuries (including, without



limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with services or products provided by COMPANY under this agreement which may be attributed to negligence by COMPANY.

B. Indemnification by CLIENT. CLIENT shall indemnify, defend and hold harmless COMPANY, and its directors, officers, employees, agents, affiliates, subsidiaries, successors and assigns, from and against any liens, damages, suits, charges, losses, fines, penalties, costs, liabilities, interest and expenses (including reasonable attorneys' fees) relating to or arising from, directly or indirectly, in whole or in part: (i) CLIENT's breach of this Agreement or any Statement of Work; (ii) any act or omission of CLIENT; (iii) any personal or bodily injury to or death of any Personnel while on assignment to CLIENT; and (iv) any violation of law by CLIENT or any of its directors, officers, employees, agents, consultants, affiliates or visitors to the Worksite, including any claims by COMPANY Personnel of any acts of harassment or discrimination against them while at the Worksite or as a result of such Personnel's relationship with the CLIENT.

Each party agrees to give the other party (i) prompt written notice of any claims for which the party knows or reasonably should know that it may be liable under the foregoing indemnification and (ii) the sole control to defend, negotiate, and settle such claims provided that the other party's prior written consent will be required for any settlement that admits liability on the other party's behalf or that reasonably can be expected to require an affirmative obligation of or result in any ongoing liability to the other party. Each party shall provide the other party with all necessary information in its possession and all reasonable assistance necessary to enable the party to carry on the defense of such suit.

VIII. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, REVENUE, DATA, USE, OR SAVINGS) INCURRED BY EITHER PARTY, OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S TOTAL LIABILITY UNDER THIS AGREEMENT, FOR ANY CAUSE OF ACTION WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT OF FEES PAID BY CLIENT UNDER THE APPLICABLE STATEMENT OF WORK FROM WHICH SUCH LIABILITY ARISES. CLIENT'S TOTAL LIABILITY UNDER THIS AGREEMENT, FOR ANY CAUSE OF ACTION WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT OF FEES TO BE PAID BY CLIENT UNDER THE APPLICABLE STATEMENT OF WORK FROM WHICH SUCH LIABILITY ARISES.

IX. MISCELLANEOUS

A. Assignment. This Agreement and any rights or obligations hereunder may not be assigned or delegated by either party without the prior written consent of the other party; provided that COMPANY may subcontract all or a portion of the Services to a Subcontractor of COMPANY's



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choice. Any purported assignment not in compliance with this Article IX(A) shall be null and void, and of no legal effect. COMPANY shall have the right to assign this Agreement to any successor substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization, or otherwise as long as the successor agrees to assume all obligations under this Agreement.

B. Successors and Assigns. Subject to the provisions of Article IX(A), this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

C. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

D. Notices. All notices, requests, consents and other communications hereunder (a "Communication") shall be in writing and shall be deemed to have been given (a) if mailed, the date of receipt of such Communication when sent via first class United States registered mail, return receipt requested, postage prepaid to the address listed below for the party to whom the Communication is being sent (the "Notice Party"); (b) if hand delivered or delivered by courier, upon actual delivery of such Communication to the Notice Party at the address listed below for such Notice Party; or (c) if sent by facsimile, on the first business day after the date of the sender's receipt of a confirmed transmission of such Communication to the Notice Party at the facsimile number, if any, listed below for such Notice Party provided the party giving such Communication mails a copy of such Communication within two days after the transmission of such Communication by facsimile to the Notice Party. The addresses and facsimile numbers for each party to this Agreement, as of the date hereof, are:

If to CLIENT:

City of Everett
2930 Wetmore Avenue, Suite 6A
Everett, WA 98201
Attn: IT Director
Telephone: 425-257-7701
Facsimile: 425-257-8620
Email: ITNotices@everettwa.gov

If to COMPANY:

Mythics, Inc.
1439 North Great Neck Road
Virginia Beach, Virginia 23454
Attn: General Counsel
Telephone: 866-698-4427
Facsimile: 757-412-1060
Email: Contracts@mythics.com



Any party may change its address or facsimile number by providing written notice, in accordance with the foregoing provisions of this Article X(D), to each other party of such change.

E. Dispute(s). Disputes under this teaming agreement shall be referred to the appropriate COMPANY/CLIENT presidents, or their designees, thirty (30) days before either party may commence formal proceedings; provided however, that this provision shall not restrain either party from seeking injunctive or equitable relief.

When seeking to resolve a dispute, the party's designated executives shall consider the types and impacts of the disputed matters, the effect of the dispute on the Program and COMPANY's success as awardee, the cost to both parties of resolving the dispute and the practical effects on the business of each party resulting from the resolution or failure to resolve any such dispute.

In the event that the designated executives are unable to resolve a dispute in the required time or longer, if extended by the mutual agreement of the parties, either party may then submit the matter for formal proceedings which may include litigation or alternate dispute resolution.

In the event litigation is necessary to enforce any provision of or resolve any dispute arising out of this Agreement, the Parties agree that any proceeding relating to or arising from the Agreement shall be heard and litigated exclusively in a state or federal court located in Snohomish County Washington. Each party hereto consents to the personal jurisdiction in any such action brought in any such court, consents to service of process by registered mail upon each party's designated legal counsel and waives any objection to venue in any such courts and any claim that any such court is an inconvenient forum. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS TEAMING AGREEMENT.**

During this process, each party will continue performing its obligations under this teaming agreement.

F. Expenses.

- Each party to this Agreement shall be responsible for its own expenses and costs associated with the negotiation and execution of this Agreement and the transactions contemplated hereby.
- In any legal action between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to recover from the losing party its costs and expenses, including reasonable accounting and legal fees.

G. Publicity. Each party to this Agreement understands and agrees that (1) this Agreement in its entirety will be posted on the CLIENT's website and (2) each Statement of Work may be disclosed by CLIENT to any third party without notice to COMPANY.

H. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington without giving effect to such State's principles of conflicts of laws and the laws of the United States of America. Any claim or cause of action arising out of or connected with



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this Agreement shall be brought exclusively in the Snohomish County Superior Court or in the Federal Court in the Western District of Washington. The parties consent to submit to the personal jurisdiction of such courts and waive any and all objections to such jurisdiction and venue.

I. Survival. The following provisions of this Agreement shall survive the expiration or the termination of this Agreement by either party and for any reason: Article III (A) (ii), Article V, Article VI (B), Article VI (D), Article VIII, and Article IX.

J. Execution in Counterparts. This Agreement may be executed in any number of counterparts by original or facsimile signature, each such counterpart shall be an original instrument, and all such counterparts together shall constitute one and the same agreement.

K. Titles and Headings; Rules of Construction. Titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Whenever the context so requires the use of or reference to any gender includes the masculine, feminine and neuter genders; and all terms used in the singular shall have comparable meanings when used in the plural and vice versa. This Agreement has been negotiated between the parties and will not be deemed to be drafted by, or the product of, any party. As such, this Agreement will not be interpreted in favor of, or against, any party.

L. Relationship of the Parties. COMPANY and CLIENT are and shall remain independent contractors. Nothing contained in this Agreement shall be construed to create an agency, joint venture, or partnership between the parties. COMPANY shall determine the time, place, methods, details and means of performing the Services under this Agreement. COMPANY is responsible for the supervision, control, compensation, and health and safety of its Personnel. COMPANY shall have agreements with its Personnel to enable COMPANY to meet its obligations under this Agreement. COMPANY will ensure that its Personnel are licensed under all applicable laws and regulations.

M. No Third Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than CLIENT and COMPANY, and their respective heirs, successors and permitted assigns, as applicable.

N. Force Majeure. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control. Neither party shall be liable to the other for any loss, claim or damage as a result of any delay or failure in the performance of any obligation hereunder, directly or indirectly caused by or resulting from: acts of the government; acts of God; acts of third persons; strikes, embargoes, delays in the mail, transportation and delivery; power failures and shortages; fires; floods; epidemics and unusually severe weather conditions; or other causes which do not result from the fault or negligence of such party.

O. Entire Agreement; Amendments and Waivers. This Agreement (and all Statements of Work) contains the entire understanding of the parties with regard to the subject matter contained in this Agreement and supersedes all prior agreements, communications, or understandings of the parties,




either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties hereunder, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. The parties, only by mutual agreement in writing, may amend, modify and supplement this Agreement. The failure of any party to this Agreement to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

IN WITNESS WHEREOF, the parties hereto have duly executed this Services Agreement as of the day stated above.

CITY OF EVERETT**MYTHICS, INC.**

By: _____

By: 

Name: _____

Name: Dale E Darr

Title: _____

Title: Vice President, Contracts

Date: _____

Date: 4 November 2016



Exhibit A

Sample Statement of Work

- Description of Task(s):
- Position Title/Experience:
- Labor Rate:
- Estimated Travel and Expenses:
- Period of Performance:
- Location:
- Other Considerations:

[CLIENT]

MYTHICS, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



26 July 2016
Walter Johnson
2930 Wetmore Ave
Everett, WA 98201
wjohnson@everettwa.gov
Work: 425-257-6410

Mythics, Inc.

Statement of Work #65124

Dear Walter,

Mythics has extensive experience in implementing small to large database migrations. Our experience with database migrations has helped us to develop and perfect our migration solutions. We hope to bring that experience to City of Everett and make this transition a success.

Mythics values its relationship with you and all of our clients. We foster a culture of mutually beneficial partnerships with our Clients. Per your request, I have kept the scope open-ended. Mythics will work with your team to perform the migration and setup data-guard, time permitting.

Please review the accompanied documents and reach out to me with any questions.

SOW Summary:

Service commencement:	Within 30 days, after award
Service conclusion:	Two weeks after commencement
Contract Vehicle:	GSA
Total Fees:	\$ 20,360.00

Sincerely,

Alex Payne
apayne@mythics.com
(757) 452-4753



MYTHICS™